

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
Southeastern Division

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Civil Action No.
	:	
JOHN WOODHAMS, individually and	:	
in his capacity as the trustee for the	:	
JOHN P.C. WOODHAMS TRUST	:	
	:	
<i>Defendant.</i>	:	
-----X	:	

COMPLAINT

The United States of America, by authority of the Attorney General, and at the request of the United States Environmental Protection Agency ("EPA"), states upon information and belief as follows:

NATURE OF ACTION

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for recovery of costs incurred by the United States in responding to the release or threatened release of hazardous substances at the Camelot Cleaners site in West Fargo, North Dakota (the "Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b).

DEFENDANT

4. Defendant John Woodhams (“Woodhams”) is an individual residing in the State of Florida. Woodhams was an owner of the Site from at least 1976 until August 25, 1995, when he transferred it to the John P.C. Woodhams Trust.

5. In 1993, Woodhams established the John P.C. Woodhams Trust (the “Trust”) for the benefit of himself and members of his family. Woodhams is the trustee of the Trust, which is the current owner of the Site. Woodhams, as trustee, is authorized pursuant to the trust agreement to pay the liabilities of the Trust and to deal with any action or proceeding relating to the liabilities of the Trust.

GENERAL ALLEGATIONS

A. The Site

6. The Site is located in Cass County, North Dakota, within the City of West Fargo, at the intersection of 6th Avenue West and Sheyenne Street (with a street address of 602 Sheyenne Street).

7. From 1977 until approximately 1998, the Site was used by a dry cleaning business.

8. The dry cleaning business used a cleaning solvent known as perchloroethylene (“PCE”). On numerous occasions from approximately 1977 until approximately 1996, PCE was disposed on the Site.

9. The dry cleaning business contaminated the Site with hazardous substances, including PCE and its breakdown products trichloroethylene ("TCE"), cis- and trans- 1,2 dichloroethene ("DCE"), and vinyl chloride.

B. Site Ownership

10. Woodhams owned the Site from at least 1976 until August 25, 1995.

11. On August 25, 1995, Woodhams transferred the Site to the Trust.

12. The Trust is the current owner of the Site.

C. Response Actions

13. In 2001, at the request of the State of North Dakota, EPA began an assessment of the Site and found perchloroethylene ("PCE") and its breakdown products, trichloroethylene ("TCE"), cis-and trans- 1,2 dichloroethene ("DCE"), and vinyl chloride.

14. Despite tight clay soils, contamination had migrated vertically downward at least 44 feet toward the West Fargo aquifer and horizontally westward into the adjacent residential neighborhood. PCE vapors were detected beneath the basement slab of one home adjacent to the Site and beneath the dry cleaning business itself. Concentrations of PCE as high as 2,220 mg/kg were found in soils and 89 mg/l in shallow groundwater. At 44 feet below the surface, PCE was detected in concentrations of 12 mg/kg. The applicable drinking water standard for PCE is 0.005 mg/l.

15. On June 11, 2003, EPA issued an Action Memorandum for a time-critical removal action to address the contamination at the Site. The removal action called for demolition of the building on the Site and *in-situ* treatment of soils and shallow groundwater

with a thermally-enhanced vapor extraction system. Contaminants were removed by heating them to their boiling point with electrodes, and then the resulting vapors were collected using a soil vapor extraction system. PCE vapors were captured by activated carbon filters.

16. An EPA contractor began installing the treatment system in June 2004 by installing fencing, perimeter wells, thermocouples, and performing soil conductivity testing. The treatment system began operating in February 2005.

17. The EPA contractor gave notice of completion in November 2005 after reporting that 5,188 pounds of PCE and its breakdown products had been removed from soils and shallow groundwater. EPA conducted confirmation sampling in January 2006, and accepted the cleanup as complete. The contractor immediately began removing above ground treatment equipment and dismantled the temporary treatment building in April 2006.

CERCLA LIABILITY

18. The Site, including its surface and sub-surface soils and water, is a “facility,” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

19. The substances contaminating soils and waters at the Site are “hazardous substances,” within the meaning of Sections 101(14), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9604(a), and 9607(a).

20. There was a “release” or “threatened release” of hazardous substances into the environment at and from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and

9607(a).

21. Hazardous substances were “disposed” of at the Site, within the meaning of Sections 101(14), 101(29) and 107(a) of CERCLA, 42 U.S.C. § § 9601(14), 9601(29) and 9607(a), on numerous occasions from approximately 1977, when Woodhams constructed a dry cleaning facility on the Site, until approximately 1996, when active dry cleaning operations at the Site stopped.

22. Woodhams owned the Site within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A) from 1976 until August 25, 1995. Hazardous substances were disposed of at the Site during this period.

23. The Trust has owned the Site within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A) since August 25, 1995 and is the current owner.

24. Defendant Woodhams is a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25. Defendant Woodhams is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner of the Site at a time when hazardous substances were disposed of therein.

26. The Trust is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. The Trust is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the owner and operator of the Site at the time the removal action was undertaken.

CLAIM FOR RELIEF
CERCLA COST RECOVERY

28. The allegations of the foregoing paragraphs are incorporated herein by reference.

29. The United States has incurred more than \$5 million in response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), as a result of the release or threatened release of hazardous substances at the Site.

30. The response costs were incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

31. Defendant Woodhams is liable for response costs incurred by the United States in connection with the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

32. The Trust is liable for response costs incurred by the United States in connection with the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court enter judgment against Defendants as follows:

A. Ordering Defendant, on behalf of himself and the Trust, to pay all unreimbursed costs incurred by the United States in response to the release or threatened release of hazardous substances at or from the Site;

B. Awarding the United States its costs and disbursements in this action; and

C. Granting the United States such other relief as the Court deems just and proper.

Respectfully submitted,

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